

MHCC050068312022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO. 2052 OF 2022

IN

(C.R. No. 2157 of 2022 of Sakinaka Police Station, Mumbai)

Ajit Dhanji Mahida,

Age : 62 yrs., Occupation :

R/o : 12 B 301, Abhilasha Co.Op. Housing Society,

Chandivali MHADA, Sakinaka,

Mumbai 400 072

..Applicant

Vs

The State of Maharashtra

(through Sakinaka Police Station)

..Respondents

Ld. Adv. Amit Gawai, for the applicant.

Ld. APP P.K. Mahajan, for the State.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE

R.M. MISHRA

(C.R.NO.4)

DATE : 19th January, 2023

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 2157 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 326, 324, 504, 506 of the Indian Penal Code.

2 Perused application and say. Heard both sides.

3 On 23/10/2022 at the instance of Khemchand Uttam Dhende aforesaid offence came to be registered.

As mentioned in the FIR, the informant's maternal uncle Mukesh Gade purchased one shop premises in the year 1997 in Abhilasha Co-operative Housing Society, Chandivali. Since last 24 years he was not allotted the said shop in his name, therefore, he had applied to the Sub-Registrar, Mhada. Accordingly, on 24/02/2021 the informant's maternal uncle was accepted to be the member of the said society. In the said order, Mukesh Gade was allowed to install one gate in front side compound wall of the shop. Accordingly, on 22/10/2022 at about 4.30 hours when the informant had been there along with his workers to start the said work, at that time, while doing the said work, the applicant came there and started asking with the informant's uncle as to on whose order they are breaking the compound wall. The applicant, thereafter started altercations with the informant's maternal uncle. On raising objection by the informant, the applicant picked a brick and tried to assault the informant's uncle which hit on the head of the complainant when he tried to rescue his maternal uncle. The

informant also sustained injury on his right hand finger when he resisted another assault of brick of the applicant. After calling the police by the informant's maternal uncle, they were taken to Rajawadi Hospital for treatment and thereafter, report came to be lodged.

4 By this application, the applicant has contended that he is retired Police Sub-Inspector. On that day, when the applicant was coming from the market, he found some sort of work going on the spot. The applicant, therefore, curiously made enquiry with the informant's uncle Mukesh Gade with whom he was having earlier acquaintance. During the exchange of words between the applicant and Mukesh Gade, the informant came there and started abusing the applicant and also pushed him. The applicant, therefore, left the spot and went to the police station. Meanwhile Mukesh Gade and the applicant came there. At that time, the applicant had lodged N.C. No. 4808 of 2022 under sections 323 and 504 of the Indian Penal Code against the informant. The applicant, thereafter, came to know that at the instance of the aforesaid informant, offence came to be registered against him under sections 324, 504 and 506 of the Indian Penal Code. The applicant was arrested by the police on 07/11/2022. The applicant learnt that Section 326 of the Indian Penal Code is added in the said crime which is non-bailable in nature. It is contended that the applicant is suffering from several ailments. He is ready to co-operate the Investigating Officer and also ready to abide the terms and conditions imposed by the court. The applicant, therefore, prayed for his release on anticipatory bail.

5 Application is resisted by the prosecution vide say Exh. 04 mainly on the ground that the offence is serious one. There is possibility of pressurizing the witnesses and repeating the offence if the applicant is granted anticipatory bail.

6 After considering the submissions of both sides, I have also gone through the case diary.

7 Learned advocate for the applicant in support of his submissions relied upon -

Mathai Vs State of Kerala Appeal (CrI.) 89 of 2005 dtd. 12/01/2005 the Hon'ble Supreme Court, in which grievous hurt injury has been explained.

Moorthy Vs State by Inspector of Police CRL.A.No. 1187 of 2000 dtd. 08/09/2006 Madras High Court in this case the complainant was assaulted by means of brick on the stomach of the complainant. The Hon'ble Madras High Court, therefore, held that brick is not dangerous weapon as defined under section 326 of the Indian Penal Code.

8 In this case, the Investigating Officer was directed to produce the case diary to decide this application. However, neither the Investigating Officer came forward nor produced the case diary for perusal of this court. It is significant to mention that the applicant is retired Police Sub-Inspector. There are specific allegation that the applicant assaulted the informant on his head by means of brick when

he came for rescue of his maternal uncle. Initially, the offence came to be registered under section 324, 504 and 506 of the Indian Penal Code. Thereafter, section 326 of the Indian Penal Code came to be added. It was, therefore, necessary to go through the medical examination certificate of the injured to determine the nature of the injury in the light of Section 326 of the Indian Penal Code. Though the applicant has contended that he was released on bail as the offence which was initially registered under section 324, 504 and 506 of the Indian Penal Code was bailable. There is nothing to show that he was arrested and released on bail.

9 As discussed earlier, the applicant is a retired Police Sub-Inspector. Even if the applicant was serving in police department, he is supposed to have caused grievous hurt by inflicting injury to the informant on his vital part i.e. on his head by means of brick. In these circumstances, necessary information will have to be elicited coupled with the recovery of article by way of his custodial interrogation which is not at all clarified by the Investigating Officer in his say. Considering these circumstances, in my view, observations laid down in the case laws cited supra cannot be said to be applicable to the facts of the present case while exercising the discretion under section 438 of the Code of Criminal Procedure. In this view of the matter, following order is passed :

ORDER

- 1) Anticipatory Bail Application No. 2052 of 2022 is hereby rejected and disposed of accordingly.
- 2) The concerned Police Station be informed accordingly.

Sd/-

(R.M. Mishra)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 19/01/2023

Dictated on : 19/01/2023
 Transcribed on : 19/01/2023
 Checked on : 19/01/2023
 Signed on : 19/01/2023

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

20/01/2023 at 4.14 p.m.
 UPLOAD DATE AND TIME

Mrs. S.B. Vichare
 NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	19/01/2023
JUDGEMENT/ORDER signed by P.O. on	19/01/2023
JUDGEMENT/ORDER uploaded on	20/01/2023